

Attorney:

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10165



600539

Index / case #: 1:19-CV-01257

AFFIDAVIT OF SERVICE

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK

RODOLFO MONTER HERNANDEZ

*Plaintiff(s)***VS**

99 THAI PLAYGROUND LLC D/B/A THAIMEE TABLE, ET AL

Defendant(s)

STATE OF NEW YORK, COUNTY OF KINGS, SS.:

AARON JONES, being sworn says: Deponent is not a party herein; is over the age of 18 years and resides in the State of New York.

On 10/7/22, at 4:38 PM at: **THAIMEE LOVE 116 WEST HOUSTON STREET, NEW YORK, NY 10012**

Deponent served the within FILED ORDER TO SHOW CAUSE

On which were set forth the Index No., herein, and date of filing

On: **NGAMPROM THAIMEE A/K/A HONG THAIMEE,**

(herein after called the recipient) therein named.

- ☐ **INDIVIDUAL** By delivering a true copy of each to said recipient personally; Deponent knew the person so served to be the person described in as said recipient therein.
- ☒ **SUITABLE AGE PERSON** By delivering thereat a true copy of each to **JUAN MONTOYA (Authorized Agent)** a person of suitable age and discretion. Said premises is recipient's: ☒ actual place of business / employment ☐ dwelling house (usual place of abode) within the state.
- ☐ **AFFIXING TO DOOR** By affixing a true copy of each to the door of said premises which is recipients' ☐ actual place of business / employment ☐ dwelling house (usual place of abode) within the state.
- Deponent was unable with due diligence to find defendant or person of suitable age and discretion thereat having visited there
- ☐ **Corporation or Partnership** By delivering thereat a true copy of each to personally. Deponent knew said corporation/partnership so served to be the corporation/partnership described in said aforementioned document as said recipient and knew said individual to be
- ☒ **MAILING** Within 20 days of such delivery, or affixing, deponent enclosed a copy of same in a postpaid envelope properly addressed to recipients last known ☐ Actual Place of Residence ☒ Actual Place of Business at **THAIMEE LOVE 116 WEST HOUSTON STREET, NEW YORK, NY 10012** and deposited the envelope in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State. The envelope bore the legend "personal and confidential" and did not indicate on the outside, thereof by return address or otherwise that the communication was from an attorney or concerned an action against the defendant.
- ☒ **DESCRIPTION** Sex: Male Color of skin: Brown Color of hair: BALDING Glasses: Age: 35 Height: 5ft4in-5ft8in Weight: 161-200 Lbs. Other Identifying Features:
- ☒ **MILITARY SERVICE** I asked the person spoken to whether defendant was in active military service of the United States or the State of New York in any capacity whatever and received a negative reply. The source of my information and the grounds of my belief are the conversations and observations above narrated.

☐ Subpoena Fee Tendered in the amount of☐

Sworn to before me on 10/10/22

TAMARA TOWSHIN ALAM
NOTARY PUBLIC, STATE OF NEW YORK
REGISTRATION NO. 01AL639961
QUALIFIED IN KINGS COUNTY
COMMISSION EXPIRES JANUARY 18, 2026

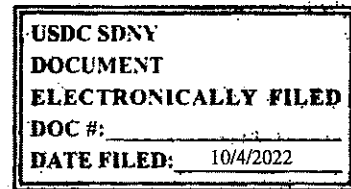


Aaron Jones
AARON JONES
2101664-DCA

SLG Process Serving Company, LLC, 50 State Street, Albany, NY
12207 2084823-DCA

Work Order No. 600539**File No: 1:19-CV-01257**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**



-----X
RODOLFO MONTER HERNANDEZ,

Plaintiff,

19-CV-01257 (ALC)(SN)

-against-

ORDER TO SHOW CAUSE

**99 THAI PLAYGROUND LLC d/b/a THAIMEE
TABLE, et al.,**

Defendants.

-----X
SARAH NETBURN, United States Magistrate Judge.

This wage-and-hour case has a complicated, and somewhat tortured, history. The Court's current concern is whether Defendant Ngamprom Thaimée, a/k/a Hong Thaimée ("Thaimée"), was properly served.

I. Service on Thaimée

Plaintiff filed his original complaint on February 8, 2019, seeking relief for violations of the FLSA and NYLL. ECF No. 1. Thaimée was the owner and head chef of the now-closed restaurant Thaimée Table, where Plaintiff is alleged to have been a delivery worker. The Court issued an electronic summons as to Thaimée on February 11, 2019. Following the filing of the First Amended Complaint, the Court issued a second summons as to Thaimée on April 26, 2019. Plaintiff filed an affidavit of service indicating that service was effected on Thaimée on May 14, 2019, by service at the restaurant Thaimée Table. ECF No 38. Based on proof of the May 14, 2019 service, the Court issued a Certificate of Default on February 26, 2020. ECF No. 78.

Separately, in connection with an Order to Show on Plaintiff's motion for default, Defendant Matt Bruck challenged his service on May 14, 2019, at Thaimée Table in part because

“during the week of April 29, 2019, a New York City Marshall padlocked the restaurant and returned the property to the building’s owner.” ECF 101. Bruck submitted photos that purport to establish that the Marshal executed a warrant on April 23, 2019, at which time the landlord took legal possession of the premises. Although the Court did not grant Bruck’s motion to dismiss for ineffective service, it extended the time to allow Plaintiff to serve Bruck. ECF No. 108.

On this record, at a subsequent hearing, the Court addressed whether Thaimée could have been served on May 14, 2019. Plaintiff responded in two ways. First, he submitted an affidavit of service purporting to establish that Thaimée was served at Thaimée Table on April 3, 2019, before the restaurant was allegedly closed, by delivering the summons and original complaint to a co-worker named “Leo Smith.” ECF No. 137-1. This affidavit of service has never been filed with the Court and no Certificate of Default has been issued in connection with it. Second, he submitted a log and photo from process server Andrew Meisel, which purports to establish that he actually served the summons and Amended Complaint on May 14, 2019, by delivering them to a co-worker named “Joseph Smith,” and that the restaurant was open at that time.

II. Order to Show Cause

The Court has serious concerns as to whether Thaimée has been properly served. With respect to the only affidavit of service filed with the Court, the evidence suggests that service on May 14, 2019, by delivering the summons and Amended Complaint to a co-worker at Thaimée Table, is not possible. In addition to the proof submitted by Defendant Bruck – including the executed warrant by the City Marshal – news articles and reliable internet pages confirm that Thaimée Table was closed by at least April 30, 2019. See, e.g., <https://www.opentable.com/r/thaimée-table-ngam-new-york> (reviews on April 30, and May 4, 2019, stating that the restaurant is “closed”). Plaintiff’s affidavit of service dated April 3, 2019, was never filed with the Court

and no Certificate of Default has been entered in connection with that affidavit. Process server Andrew Meisel's trustworthiness is certainly in doubt.

Additionally, the Court's own research suggests that Thaimée is a successful and well-known "chef, entrepreneur, and philanthropist," and "one of the most visible faces of Thai food in the US." See <https://www.hongthaimée.com/chef-hong-thaimée/>. She is hardly someone who should be difficult to serve.

CONCLUSION

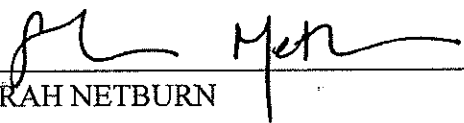
Accordingly, Plaintiff is ORDERED to serve this Order upon Defendant Ngamprom Thaimée a/k/a Hong Thaimée. Plaintiff must undertake every effort to serve Thaimée, including without limitation:

- Personal service at the restaurant Thaimée Love, located at 116 West Houston Street, New York, NY 10012;
- Calling Thaimée Love at (347) 325-2557 to request assistance with service;
- Contacting Thaimée's in-house press contact through the website at <https://www.hongthaimée.com/press/>

By October 14, 2022, Plaintiff must file an attorney affidavit attesting to all efforts undertaken to serve Thaimée and the results of that effort. Absent further order of the Court, by October 28, 2022, Thaimée is ORDERED TO SHOW CAUSE why the Court should not enter default against Defendant Ngamprom Thaimée a/k/a Hong Thaimée based on the April 3, 2019 affidavit of service and assess damages against her in accordance with Plaintiff's Proposed Findings of Fact and Conclusions of Law and the supporting record. See ECF Nos. 119-120.

SO ORDERED.

DATED: October 4, 2022
New York, New York



SARAH NETBURN
United States Magistrate Judge